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3 The following are summary minutes for the meeting of the **City of Las Cruces – Housing**
4 **Policy Review Committee** on April 20, 2022. The meeting was held via Zoom and in
5 Room 2007A at City Hall, 700 N. Main Street, Las Cruces, New Mexico.
6

7 **Members Present:**

8 Kasandra Gandara, City Council
9 Johana Bencomo, City Council
10 Yvonne Flores, City Council
11

12 **Members Absent:**

13 Benjamin Beard, Las Cruces Home Builders Association
14 Sonja Unrau, NM Mortgage Finance Authority
15 Juan Olvera, Mesilla Valley Public Housing Authority
16

17 **Others Present:**

18 Natalie Green, Housing Neighborhood Service Manager
19 Jan Lauterbach, Housing Development Coordinator
20 Kevin Wilson, Housing Development Coordinator
21 Tim Pitts, Deputy Director Building Development
22 Larry Nichols, Community Development Director
23 Vanessa King, Senior Office Manager
24 Jennifer Vega-Brown, City Attorney
25 Rene Romo
26 Sergio Ruiz, Policy Analyst
27 Gerard Anaya, Police
28 Paris Rubio
29 Nicole Martinez, Director, Mesilla Valley Community of Hope
30 Eric Enriquez, Assistant City Manager
31 Greg Shervanick:
32 Becky Baum, RC Creations, Transcription
33

- 34 **1. Call to Order:** Councilor Bencomo called the meeting to order at 2:01.
35
36 **2. Conflict of Interest:** No conflict of interest was proclaimed. Those present
37 introduced themselves.
38
39 **3. Acceptance of the Agenda:** Motion to accept the agenda by Councilor Gandara,
40 seconded by Councilor Flores. Motion passes.
41
42 **4. Minutes for Approval:**
43 a. **Housing PRC Meeting of March 16, 2022:** Motion to accept the Minutes
44 by Councilor Flores, seconded by Councilor Gandara. Motion passes.
45

1 **5. Action Items:**

2 **a. Uniform Housing Code and Nuisance Abatement Ordinance:** Jennifer
3 Vega-Brown gave the presentation. It combines all existing building codes
4 and building requirements into one ordinance as well as creates a
5 mechanism to take action on substandard housing. A building that is in
6 violation of this code is a nuisance per se. Within the code there is a
7 provision that allows for people to be removed from a substandard dwelling
8 unit. The landlord would be required to pay for rehousing the people or the
9 City could potentially pay for that; this provision needs to be determined.
10 Ms. Vega-Brown removed the Planning and Zoning Commission to be
11 replaced by the City Council in the document; administrative action would
12 take place at City Council. If there is an appeal it would go to District Court.

13
14 People should have enough opportunities for due process; especially with
15 people representing themselves. State statute NMSA 3-18-5 allows
16 definition of public nuisance which is what this ordinance is. It typically
17 works in conjunction with the Nuisance Abatement Ordinance. There were
18 still questions on enforcement and how the process goes. The two
19 ordinances work together. This type of nuisance is where state law allows
20 the City to demolish a building pursuant to the home rule authority and the
21 other type of nuisance which is similar to red light cameras. Nuisance
22 Abatement Action is injunctive relief; not trying to take the property but
23 rather be a remedial measure to fix it. It allows for the City to take action
24 and place a lien on the property; still must follow the state law to place the
25 lien and owner must have due process.

26
27 There is a long list of the New Mexico criminal codes. The properties that
28 action can be taken on must have a multitude of issues; tons of calls for
29 service on one thing, etcetera. It is not an easy or short process; could take
30 up to two years. The first step is identifying the building as a nuisance;
31 building must be a structure that is ruined, damaged, and dilapidated or the
32 premises is covered with ruins, rubbish, wreckage, or debris. There must
33 be a lot of documentation on why it is a public nuisance; can't just be to a
34 few people. This legal process is for the attorney. A program will need to
35 be created meeting regularly with police, fire, and community development
36 to discuss properties; only ones that can have action taken on them.

37
38 Larry Nichols commented that a lot of the responsibility and enforcement on
39 the City Manager or Council. In previous places he's worked there have
40 been a Code Official who would work with all the various groups to process
41 the ordinances. He believes that the International Property Maintenance
42 Code enables the City to do things in a more effective and efficient way than
43 what there is now. These two Ordinances work together to allow the City
44 to take action of the state law with abatement. There was discussion on the
45 applicability and scope of administration and enforcement, the duties and
46 powers of the code official. Inspections, right of entry, identification, notices,
47 and orders could fit under the Ordinance. You cannot deprive someone of
48 their property without due process. Councilor Bencomo stated there will be

1 more time for comments prior to this going to City Council; she is interested
2 in the comments from Ben Beard who is not there today.
3

4 Councilor Bencomo asked once something is identified where it get triggers
5 to the next legal level. It's not in the Ordinance but part of what is already
6 happening; don't want it in the ordinance. Discussion on the NAT is an
7 administrative level. Councilor Gandara commented that this is something
8 they have wanted for years to help with making sure homes are habitable.
9 She added that there are a lot of vacant properties that aren't up to code
10 but nothing is being done. She would like to see a yearly fee of some sort
11 to help with encouraging people to do something with the properties. The
12 ordinance is robust and is the same for dilapidated buildings; certain houses
13 fall under this ordinance.
14

15 Property rights are the highest level of protection and liberty that individuals
16 have. The government must have an extremely compelling case for taking
17 someone's property; not permanently but to impose things to the property
18 owner. Unless it's presenting a danger or otherwise violating another type
19 of ordinance it is only a petty misdemeanor or citation, no injunctive relief in
20 the Municipal Court. If a person wants to leave their house empty they have
21 every right to do so. Some cities have required a house vacancy fee in
22 order to track them; it is low level fees. Mr. Nichols stated that fees should
23 be more for recovering costs of having police and fire respond to calls at
24 those homes. Councilor Gandara commented on the issues with having
25 vacant houses and asked what can be done, break-ins, fires, and etcetera.
26

27 When Ms. Vega-Brown started at the City she stopped the process of NAT
28 due to no due process written into the ordinance; it has been resolved.
29 During COVID all Civil Action Suits were stopped as well but now action can
30 be taken. Once the building has been identified as a nuisance then a
31 building inspection must be done. The building is red tagged if appropriate
32 or an inspectorial search order must be done; more like a search warrant
33 from State Court to enter the property based on probable cause of
34 dangerous structure. After those items they can invoke a certificate of
35 occupancy if appropriate; requires proper notice. The next step is to
36 determine who owns the building and who occupies the building; both need
37 notice.
38

39 Next a resolution would be drafted which must state the building is ruined,
40 damaged, and dilapidated, a menace to the public health, comfort, peace,
41 or safety, and requires the removal from the municipality. The resolution
42 must include all photos, documentation, calls for service, citations, and
43 etcetera. A deadline for removal must be stated. Then a request for title
44 work will be made for ownership; an appraisal for the building must be
45 included within the resolution; if demolition is requested there must be
46 contractor's affidavit to see the cost; ask for asbestos testing; request
47 proper permits, especially for demolition; and place on the agenda for
48 Council. After that, the water and gas must be disconnected for demolition

1 if needed. The next step would provide the owner notice; serve a copy of
2 the resolution to the occupant or agent in charge. If the owner is not on the
3 premises then it must be posted on the building structure; it will also be
4 published in the agenda.

5
6 Once the resolution is passed, within 10 days of receipt of the copy of the
7 resolution or posting the owner shall commence to removing the building or
8 the owner needs to file a written objection with the clerk. If the objection is
9 filed then the governing body must fix the date for the hearing at a regular
10 City Council hearing. All evidence must be considered for and against the
11 removal of the structure as well as determine if the resolution is going to be
12 enforced or rescinded. After that process, the owner may appeal to District
13 Court; need to file a petition in the District Court within 20 days after the
14 determination is made. Notice of the appeal must be given to City Council
15 within five days. The District Court will hear the matter in a de novo hearing
16 and enter the judgement. At that point the City would have to issue a civil
17 complaint in the District Court; five count complaint.

18
19 Count one would seek to have the property declared a public nuisance
20 under state statute. Count two would seek to have the property declared a
21 public nuisance under the City ordinance. Count three would seek to have
22 the property declared in violation of City code or the Housing and Zoning
23 Code. Count four would ask for injunctive relief to allow the City to enter
24 the property and evict the tenants in order to secure the property; it is civil
25 so the City will not take title or fines but ask for attorney fees if appropriate.
26 If the owner fails to take the action then the resolution goes into effect; go
27 to court asking for the judgements, the District Court would enter the
28 judgment either way, etcetera. At that point the City can pay for the removal
29 of the condemned building and then place a lien on it. There is a process
30 of placing the lien under number 12. Depending on the situation, if people
31 are asked to be moved by landlord/tenant situation the Uniform Housing
32 Code could be used to allow rehousing.

33
34 Any time something is filed in District Court there is a 30 day response
35 period; there can be a default judgment if they don't answer with 30 days to
36 answer that. The City also has 30 days to respond if they receive anything.
37 If a resolution is passed and no one responds then action can be taken;
38 usually people respond. While waiting for responses the City may abate;
39 the building official comes in and can board a building up and red tag it. The
40 injunctive relief from the court could be demolish or doing a few things within
41 a certain amount of time; if the items are not done in the allotted time then
42 the City can go back to court. The longest time Ms. Vega-Brown has seen
43 with this process is roughly two years. Another thing that extends the
44 process is when they put out a notice and then are reliant on the property
45 owner to give an answer as to what they will do.

46
47 There was discussion on what can be done with homes that are
48 uninhabitable but people decided to live in them anyway. They can get an

1 inspectorial search order through Magistrate Court; that gives the building
2 official the ability to go into the house and any structures they see they can
3 condemn if needed. To receive the search order they must show that there
4 is probably cause, all documentation and pictures, etcetera. Ms.
5 Vega-Brown gave an explanation on when they are able to invoke the
6 ordinance; the building must be a public nuisance and a danger to the
7 community. If a person simply wants to board up the house or it's
8 dilapidated doesn't mean it has to be removed. There was clarification on
9 what the officers are able to do; COVID changed many things and shut
10 down many things. Ms. Vega-Brown has two cases now that she is working
11 on.

12
13 Mr. Wilson asked if they've given thought to landlords who won't take care
14 of things or retaliation when tenants ask for repair. The Uniform Housing
15 Code does have a mechanism to cite the landlord every day for a violation
16 specific in the code; they do have an opportunity to go to Municipal Court to
17 fight the citation. If those citations stack up then the property becomes a
18 nuisance and the City can implement the Ordinance. There was discussion
19 on rentals on West Picacho with landlords who are being difficult; one
20 evicted the tenant after being forced to fix a broken sewer line. The landlord
21 at 1200 W Picacho split 10 apartments into 20 efficiencies and ran his own
22 gas, water, and electric. Both landlords were found guilty and were forced
23 to pay a fine; both paid it immediately. They are also one of the few
24 landlords accepting vouchers from homeless community. There is
25 language in the Ordinance in regards to retaliation and moving people. The
26 state law also has some landlord/tenant language.

27
28 Mr. Nichols has stated that what they've seen is the landlord agrees to fix
29 the issue, asks the tenants to leave while the repairs are being made, but
30 then increase the rent of the tenants who may not be able to pay it. The
31 City can't have any say in the contractual relationship; it would take state
32 law. Councilor Gandara mentioned an issue in San Pedro rentals; not much
33 space at all for many people, roughly 375 square feet. There was additional
34 discussions on rentals and landlord issues. The Kilby has improvements to
35 the exterior but there are still issues inside. There is exception to efficiency
36 apartments and tiny homes would also present a different issue; need to be
37 defined and added as an exception to space requirements. Mr. Nichols will
38 work on language for tiny homes; efficiency apartments are in the language.

39
40 Councilor Bencomo asked about page 24 and page 25 with the funds for
41 relocation; need to discuss an appropriate number to put into the budget.
42 She recommended extra staff if Ms. Vega-Brown needs it. There was
43 question as to make that a question for Council work session or discuss it
44 now. Ms. Vega-Brown answered the staff question; they are understaffed
45 currently with two attorney positions open. The salary range would be from
46 \$86,000 to \$110,000. They are having difficulty competing with public
47 offices. It is unknown of what the volume would be. Once she trains the
48 other attorneys to handle the cases the volume shouldn't be too much. The

1 judge may require mediation with the owner; hopefully in those
2 conversations a middle ground can be found and an agreement will be
3 signed. The mediation would be informal; simply talking with the owner
4 with the desire to get the property fixed without going to court.
5

6 Councilor Gandara suggested hiring a mediator to do this for the City. Ms.
7 Vega-Brown stated that that's what the City Council is for. When she meets
8 with someone prior to filing any litigation she sits with them to discuss how
9 they can come into compliance without filing a lawsuit. They are able to
10 enter into an agreement and can use that in court if needed. City Council
11 can give extra time for the individual to fix things as well. It is unknown how
12 many people don't have an attorney during these cases; they should always
13 have an attorney in civil rights and litigation. In Municipal Court a good
14 number may not have an attorney but you can qualify for a public defender
15 if you need one. The District Court one must fill out an application and then
16 be assigned an attorney; Municipal Court may be similar. The civil side at
17 the District Court they aren't entitled to an attorney. Ms. Vega-Brown stated
18 that when she was in Albuquerque it was roughly 85% pro se.
19

20 Councilor Gandara is unsure that people could afford attorneys and may
21 feel unsure. There should be something in place to make sure it is
22 equitable. There is legal aid in town. Councilor Bencomo stated that if one
23 has committed to be a landlord then there are certain responsibilities and
24 rights. If those responsibilities are not being met they have to figure it out.
25 Councilor Flores added that people without an attorney tend to not know
26 what their rights are. This is why there are multiple steps of due process.
27 Attorneys have a legal responsibility to be fair and fairly represent. Ms.
28 Vega-Brown is unable to give legal advice but can give the options. District
29 judges give a lot of leeway to pro se individuals.
30

31 There was discussion on funding and having language in the Ordinance;
32 the relocation fund needs to be established with discussion on how much
33 should be in there and how to keep the funding there. There was one
34 woman who had to be relocated and it cost just at \$6,600 for 11 months of
35 habitation. This is assuming the clients pay their own utilities; they cover
36 the rent and a little moving assistance. They did have a special deal on the
37 house; no way one could have gone out to the open market for what they're
38 paying in rent. The current rent is astronomical. Natalie Green suggested
39 asking for \$50,000 and then if more is needed it can be requested.
40 Relocation is a last ditch effort and rare circumstances. Ms. Green
41 suggested dedicating \$250,000 to the program every year; legal,
42 abatement, and relocation funds but staff would be kept separate. Staff is
43 currently dealing with one right now of abatement cost and pricing out
44 demolition which will help with cost ideas; discuss in a work session.
45

46 Motion to accept the Minutes by Councilor Flores, seconded by Councilor
47 Gandara. Motion passes.
48

1 **6. Agency Spotlights - None:**

2
3 **7. General Discussion - None:**

4
5 **8. Future Items for Review:** The next meeting is May 18th and the topic will be
6 Source of Income Discrimination. Albuquerque is considering theirs as well; city
7 of Santa Fe is doing it as well. Ms. Green will send the information to the Board
8 for review. There was a lot of pushback in Albuquerque so there is an extended
9 public input piece added in; unsure it will be ready yet. Another potential topic is
10 reviewing a community plan to address homelessness from Albuquerque; staff is
11 planning on doing an allocation plan for home ARP planning to address
12 homelessness but may be able to tie that to a community component. The Board
13 will be able to look at it next month but a deeper discussion will need to take place
14 another time. The City did a 10 year plan to end homelessness about 10 years
15 ago which was determined by the federal government but wasn't funded.

16
17 Councilor Flores asked if there was anything on the statewide housing strategy
18 review. MFA has been meeting with stakeholders on a statewide housing strategy;
19 three from the Las Cruces area which are Ms. Green, Nicole Martinez, and Jeff
20 Curry. There is an analysis, policies in different areas, and etcetera. The state as
21 a whole is intended to have an affordable housing strategy. There are participation
22 from home builders and League of Women Voters as well. Councilor Flores
23 recommended to have the League of Women Voters participate; the state and
24 Mortgage Finance Authority picks the participants. This has been going on for six
25 months and Ms. Green can give an update to the Board.

26
27 **9. Adjournment:** Motion to adjourn the meeting by Board Member Flores, seconded
28 by Board Member Gandara. The meeting adjourned at approximately 3:37 p.m.

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33 
34 Chairperson

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38 Approved: May 18, 2022